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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,071	01/13/2006	Heinz Focke	Q86252	5834
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SUITE 800				
WASHINGTON, DC 20037				
EXAMINER				
NGUYEN, PHU HOANG				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
06/23/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,071

Applicant(s)

FOCKE ET AL.

Examiner

PHU H. NGUYEN

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/26/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nowers et al. (U.S Patent No. 4569359). Nowers discloses a device for producing filter cigarettes in which an outer filter cover has openings (perforations) which are introduced into the filter cover by a laser perforation element (column 1, lines 34-38), the porosity being checked by measuring the pressure drop through the tipping paper or optical by measuring device (5, fig. 1). Nova further discloses:

a pressure meter (5, fig. 1);

the perforation element is arranged in the region of the device for producing the filter cigarette so it can perforate the filter of the cigarette (see figs. 1 and 2),

the perforation element can be adjusted with regard to the number and/or size of the openings to made in the filter cover (pages column, lines 34-38 and lines 55-63).

Nowers also discloses that the measurement of the openings is supplied to the control device in a feed back loop so that the perforation element can be adjusted accordingly to the response to changes in the results (column 1 1, lines 53-63).

Although Nowers does not disclose the control device is a computer, it would have been obvious to one of ordinary skill in the art that the control circuit (8, fig. 1) can

be a computer since it is well known in the art that a computer can be used as a control device/system.

Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nowers et al. (U.S Patent No. 4569359) in view of Wahle et al. (U.S Patent No. 4193409).

Regarding claim 15, Nowers discloses a measuring device (5, fig. 1) measuring the pressure drop through the tipping paper but does not expressly disclose a testing chamber. Wahle discloses testing unit (31, fig. 4) includes a chamber where the filter cigarette is being supplied with test air and a pressure transducer (71, fig. 4) measure the pressure and then the signal is transmitted by integrated circuit (72, fig. 4) to be compared with a reference (see fig. 4 and column 11, lines 15-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Nowers to have the testing unit as taught by Wahle.

Regarding claims 16, 18-19 and 21, Wahle further discloses the testing unit is configured as a testing drum (31, fig.s 1 and 4) having a plurality of flutes arranged along the circumference for holding one filter cigarette (z, fig. 4), as the filter cigarette is capped off by sealing elements (62a, 62b on fig. 4) which are respectively adjacent to and bear against the left hand and right hand end faces of the conveyor and respectively include arcuate grooves (61a, 61b on fig. 4) connected with conduits (64a, 64b on fig. 4); the conduits communicate with a source of compressed air or another suitable gaseous testing fluid by way of a conduit (67a on fig. 4) (column 10, lines 10-23).

Regarding claim 17, Wahle also discloses region (reference sign t, fig. 4) of tobacco filter cigarette and another region (reference sign p, fig. 4) where the wrappers of filter plugs are provided with perforations; each of these region can be connected via conduit (59, fig. 4) to a pressure meter.

Regarding claim 20, although Wahle does not disclose resilient material; it is well known to use resilient material (such as rubber) for sealing application. Also, it would have been obvious to one of ordinary skill in the art to use resilient material for sealing the chamber of the testing unit during testing for the perforation of cigarette because the test involves measuring the pressure drop through the tipping paper and an unsealed chamber could result in false readings.

Regarding claim 22, in addition to the features discussed above, Wahle discloses air lines (64a, 64b on fig. 4) lead to sensor (pressure transducer 71, fig. 4) and the sensor is connected to in the control loop to compare the output with a reference (column 11, lines 34-50).

Response to Arguments

Applicant's arguments filed 3-26/2009 have been fully considered but they are not persuasive.

Regarding claim 14, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Furthermore, the recitation of the filter cigarettes does not further limit the device for producing filter cigarettes.

Applicant essentially argues Wahle employs a different testing method with no reference being made to a control loop as claimed by Applicant. However, as discussed above for claim 22, Wahle discloses measured results are introduced into a control loop for adjusting the perforation element (column 11, lines 45-50).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHU H. NGUYEN whose telephone number is (571)272-5931. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

P.N 6/17/2009

/Philip C Tucker/

Supervisory Patent Examiner, Art Unit 1791